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HOUSE BILL 612

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO FINANCIAL PRIVACY; REQUIRING CONSENT FOR SHARING
CERTAIN FINANCIAL INFORMATION; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. DISCLOSURE OF CERTAIN FINANCIAL INFORMATION
PROHIBITED.--

A. As used in this section:

(1) "affiliate" means a person that controls,
is controlled by or is under common control with another
person, but does not include a joint employee of the person and
the affiliate;

(2) "consumer" means a natural person or that
person's personal representative who has obtained a financial
product or service in this state from an in-state financial
institution;

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1 (3) "financial institution" means an insured
2 state or national bank, a state or federal savings and loan
3 association or savings bank, a state or federal credit union, a
4 person in the business of making loans, a mortgage loan
5 company, an escrow company, a broker-dealer as defined in the
6 New Mexico Securities Act of 1986 or an investment advisor as
7 defined in that act;

8 (4) "in-state financial institution" means a
9 financial institution that maintains a place of business in New
10 Mexico;

11 (5) "nonaffiliated third party" means any
12 entity that is not an affiliate of, or related by common
13 ownership or affiliated by corporate control with, the
14 financial institution; and

15 (6) "nonpublic personal information":

16 (a) means personally identifiable
17 financial information: 1) provided by a consumer to a financial
18 institution; 2) resulting from a transaction with the consumer
19 or a service performed for the consumer; or 3) otherwise
20 obtained by the financial institution; but

21 (b) does not include: 1) publicly
22 available information; or 2) information excluded by a rule
23 adopted pursuant to Subsection E of this section.

24 B. Unless exempted by a rule adopted pursuant to
25 Subsection E of this section, an in-state financial institution

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1 shall not disclose nonpublic personal information to any
2 nonaffiliated third party without the express prior consent of
3 the consumer to whom the nonpublic personal information
4 relates.

5 C. An in-state financial institution shall not
6 discriminate against or deny an otherwise qualified consumer a
7 financial product or a financial service because the consumer
8 has not consented to allow the financial institution to
9 disclose or share nonpublic personal information pertaining to
10 the consumer with any nonaffiliated third party.

11 D. An in-state financial institution shall use a
12 form to obtain consent to disclose nonpublic personal
13 information to a nonaffiliated third party. The form shall:

14 (1) be a separate document, not attached to
15 any other document;

16 (2) be dated and signed by the consumer;

17 (3) clearly and conspicuously disclose that by
18 signing, the consumer is consenting to the disclosure to
19 nonaffiliated third parties of nonpublic personal information
20 pertaining to the consumer;

21 (4) clearly and conspicuously disclose:

22 (a) that the consent will remain in
23 effect until revoked or modified by the consumer;

24 (b) that the consumer may revoke the
25 consent at any time; and

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1 (c) the procedure for the consumer to
2 revoke consent; and

3 (5) clearly and conspicuously inform the
4 consumer that:

5 (a) the financial institution will
6 maintain the document or a true and correct copy;

7 (b) the consumer is entitled to a copy
8 of the document upon request; and

9 (c) the consumer may want to make a copy
10 of the document for the consumer's records.

11 E. After considering the exceptions to the federal
12 disclosure prohibition in 15 U.S.C. 6802 and the federal
13 definitions in 15 U.S.C. 6809 and after consulting with the
14 director of the securities division of the regulation and
15 licensing department and the director of the financial
16 institutions division of the regulation and licensing
17 department, the attorney general may by rule prescribe
18 exclusions from the definition of "nonpublic personal
19 information" and classes or types of disclosures that are
20 exempt from the disclosure prohibition of Subsection B of this
21 section if the definition exclusion or exempted class or type
22 of disclosure is:

23 (1) necessary for the financial institution to
24 carry out financial transactions in its normal course of
25 business;

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1 (2) necessary to effect, administer or enforce
2 a transaction requested or authorized by the consumer; or

3 (3) specifically authorized or required by
4 federal or state law.

5 F. After a hearing, the following are authorized to
6 assess a civil penalty for a violation of this section:

7 (1) the attorney general;

8 (2) the director of the securities division of
9 the regulation and licensing department if the alleged violator
10 is a broker-dealer or an investment advisor; and

11 (3) the director of the financial institutions
12 division of the regulation and licensing department if the
13 alleged violator is not a broker-dealer or an investment
14 advisor.

15 G. Penalties for violations of this section shall
16 apply irrespective of the amount of damages suffered by the
17 consumer as a result of that violation. A penalty shall not
18 exceed two thousand five hundred dollars (\$2,500) per consumer
19 or five hundred thousand dollars (\$500,000) for a single
20 release of information on more than one consumer. In
21 determining the amount of a penalty, the following factors
22 shall be considered:

23 (1) the total assets and net worth of the
24 violating entity;

25 (2) the nature and seriousness of the

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1 violation;

2 (3) the persistence of the violation,
3 including any attempts to correct the situation leading to the
4 violation;

5 (4) the length of time over which the
6 violation occurred;

7 (5) previous violations of the provisions of
8 this section;

9 (6) the harm caused to consumers by the
10 violation; and

11 (7) the benefits derived by the violation.

12 H. A person assessed a civil penalty may appeal to
13 the district court of Santa Fe county within thirty days after
14 the assessment. All appeals shall be on the administrative
15 record. The court shall set aside the assessment only if it is
16 found to be:

17 (1) arbitrary, capricious or an abuse of
18 discretion;

19 (2) not supported by substantial evidence in
20 the record; or

21 (3) otherwise not in accordance with law.

22 Section 2. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2007.